



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/893,346	06/28/2001	Wayne D. Comper	48643-015	2638

7590 01/27/2003

MCDERMOTT, WILL & EMERY  
600 13th Street, N.W.  
Washington, DC 20005-3096

EXAMINER

BROWN, STACY S

ART UNIT	PAPER NUMBER
----------	--------------

1648

DATE MAILED: 01/27/2003

8

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/893,346	COMPER, WAYNE D.
Examiner	<b>Art Unit</b>	
Stacy S Brown	1648	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on December 11, 2002.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1-5,7-14,16-18 and 20-23 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-5,7-14,16-18 and 20-23 is/are rejected.

7)  Claim(s) 9-11,14,19 and 21 is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 28 June 2001 is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)  The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)  All b)  Some \* c)  None of:

1.  Certified copies of the priority documents have been received.
2.  Certified copies of the priority documents have been received in Application No. 09/415,217.
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a)  The translation of the foreign language provisional application has been received.

15)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)      4)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_ .  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)      5)  Notice of Informal Patent Application (PTO-152)  
3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s)      6)  Other: \_\_\_\_\_

### **DETAILED ACTION**

1. Applicant's amendment received December 11, 2002 is acknowledged and entered.

Claims 1-5, 7-14, 16-18 and 20-23 are pending and examined.

#### ***Response to Amendment***

2. The following objection and rejections are withdrawn in view of Applicant's amendments:

- The objection to the specification is withdrawn.
- The rejection of claims 1-19 under 35 U.S.C. 112, second paragraph is withdrawn.
- The rejection of claims 1-7, 16-17 and 20 under 35 U.S.C. 102(b) is withdrawn.
- The rejection of claims 18-19 and 21 under 35 U.S.C. 103(a) is withdrawn.

#### ***Claim Objections***

3. Claims 9, 10, 11, 14, 19 and 21 are objected to because of the following informalities:

- Claims 9 and 14, (b), "native or intact modified albumin [emphasis added]" should be "native and intact modified albumin" in order to be consistent with the preceding claims.
- Claim 10, "unmodified and modified" should be "native and intact modified" for claim language consistency.
- Claims 11, 19 and 21, "modified albumin" and "modified form of albumin" should be "intact modified" or "intact form" for claim language consistency.

***Claim Rejections - 35 USC § 112***

4. Claims 1-5, 7-14, 16-18 and 20-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- Claims 1 and 20, references to “the protein” are unclear. Which form of the protein is being measured or used to indicate an effective treatment agent? Native protein or intact modified protein or both?
- Claim 2, it is unclear whether the parentheses are limiting the types of diseases or listed as representative examples.
- Claim 7, line 1, “the protein” is unclear. Is the protein native protein or intact modified protein or both?
- Claim 12, line 1, “the albumin” is unclear. Is the albumin in the native or intact modified form or both?
- Claim 16 contains improper Markush language.

***Conclusion***

5. No claim is allowed.

Papers relating to this application may be submitted to Group 1600 by facsimile transmission. Papers should be faxed to Group 1600 located in Crystal Mall 1. The Fax number for Art Unit 1648 is (703) 308-4426. All Group 1600 Fax machines will be available to receive

Art Unit: 1648

transmissions 24 hrs/day, 7 days/wk. Please note that the faxing of such papers must conform with the Notice published in the Official Gazette, 1096 OG 30, (November 15, 1989).

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Stacy S. Brown, whose telephone number is (703) 308-2361. The Examiner can normally be reached on Monday through Friday and alternate Wednesdays from 6:30 AM-4:00 PM, (EST). If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, James C. Housel, can be reached at (703) 308-4027. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

*Stacy S. Brown*  
Stacy S. Brown  
January 23, 2003



HANKYEL T. PARK, PH.D  
PRIMARY EXAMINER